IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2453 OF 2006

MAHENDRA VIDYADHAR EKBOTE .. PETITIONER

Versus

JIVAT KEVALRAM IDNANI & ANR. .. RESPONDENTS

Mr. Filji Frederick for petitioner

CORAM:-SMT. RANJANA DESAI, J.

DATED:- 4/12/2006

P.C.

. The petitioner is the original accused. He has challenged in this petition order dated 18/4/06 passed by the Chief Judicial Magistrate, Nashik, whereby the application filed by the complainant for opening the envelope and to exhibit original notice has been allowed and order dated 11/9/06 passed by the Adhoc Additional Sessions Judge, Nashik rejecting revision application filed challenging the order dated 18/4/06 passed by the Chief Judicial Magistrate, Nashik.

2. The learned counsel for the petitioner

strenuously urged that the evidence has been closed and pursis has been submitted and, therefore, it was not open to the learned Magistrate to allow the complainant to bring any additional evidence on record. He submitted that xerox copy of the notice dated 28/6/03 is already on record and, therefore, grant of the complainant's application would unnecessarily delay the trial. In support of his submission, the learned counsel has relied on judgment of the Supreme Court in **Mir Mohd. Omar & Ors. v. State of West Bengal, AIR 1989 SC 1785**.

3. I am not impressed by the submissions of the learned counsel. Section 311 of the Code of Criminal Procedure ("Code" for short) states that at any stage of any inquiry, trial or other proceeding under the Code, the court has power to summon any person as a witness or examine persons present, if it appears to the court that the evidence of such person is essential for the just decision of the case. Section 311 of the Code vests wide powers in the Magistrate. However, these powers have to be used with care and circumspection. In the facts of this case, in my opinion, the learned Magistrate has rightly used

these powers in the interest of justice and for the just decision of the case.

4. The judgment of the Supreme Court in **Mir Mohd. Omar's case (supra)** does not help the petitioner. In that case the Supreme Court has observed that the High Court had proceeded on the assumption that PW 34 would be recalled for further examination. The Supreme Court further observed that the prosecution did not at any stage move the trial judge for recalling PW 34 for further examination. It is against the background of these facts that the Supreme Court observed that the prosecution has closed the evidence; that the accused had been examined under Section 313 of the Code and hence re-examination of PW 34 was uncalled for. The Supreme Court has however, not stated that in no case witness can be summoned after the evidence is closed. In my opinion in a given case, if the circumstances so demand for a just decision, the court can summon a witness even after the evidence is closed.

5. Hence in my opinion, no case is made out for interference. Petition is dismissed.

6. Needless to say that the accused will have a right to rebut the evidence.

JUDGE.